



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 37
[2013 Senate Bill 206]

Abortion Requirements

2013 Wisconsin Act 37 establishes new requirements which must be met prior to the performance of any abortion, requires an ultrasound before informed consent for an abortion, and provides penalties for violating these provisions.

ULTRASOUND AND INFORMED CONSENT REQUIREMENTS

Prior Law

Prior to Act 37, a woman seeking an abortion was not required to have an ultrasound prior to the abortion. However, the informed consent law, in s. 253.10, Stats., required the physician who was to perform the abortion, or another qualified physician, to, among other things, orally inform the woman that ultrasound imaging and fetal heart tone services were available to her and physically give to her certain written materials. Included in the written materials are geographically indexed materials that are designed to inform a woman services that are available to provide ultrasound imaging services, and photographs, pictures or drawings, that inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments for the first 16 weeks of her pregnancy and at four-week gestational increments from the 17th week of the pregnancy to full term, including any relevant information regarding the time at which the unborn child could possibly be viable.

Act 37

Act 37 requires a physician who is to perform an abortion, or any physician requested by a woman seeking an abortion, to perform, or arrange for a qualified person to do all of the following:

- Perform an ultrasound on the pregnant woman using whichever transducer the woman chooses. A facility that offers ultrasounds at no cost must have available transducers to perform both transabdominal and transvaginal ultrasounds.
- Provide a simultaneous oral explanation during the ultrasound, including the number of unborn children and presence and location of the unborn child.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

- Display the ultrasound images so that the pregnant woman may view them.
- Provide a medical description of the ultrasound images including the dimensions of the unborn child and a description of any viewable external features and internal organs of the unborn child.
- Provide a means for the pregnant woman to visualize any fetal heartbeat, if a heartbeat is detectable by the ultrasound transducer type chosen by the woman, and provide to the woman, in a manner understandable to a layperson, a simultaneous oral explanation.

A person who has been convicted of any of the following crimes may not perform the required ultrasound:

- Section 940.22: sexual exploitation by therapist.
- Section 940.225: sexual assault.
- Section 948.02: sexual assault of a child.
- Section 948.025: engaging in repeated acts of sexual assault of the same child.
- Sections 948.05 to 948.14: various additional sex crimes against children.

No person may require the pregnant woman to view the ultrasound images or visualize any fetal heartbeat and no person, including the pregnant woman, may be subject to any penalty if the pregnant woman declines to view the images or visualize any heartbeat. In a medical emergency, the performance of an ultrasound is not required if the physician certifies in writing that the pregnant woman is undergoing a medical emergency and what medical condition constitutes the emergency. Under the Act, the ultrasound requirements are waived for a woman whose pregnancy is the result of sexual assault provided that she satisfies certain requirements to report the sexual assault to law enforcement authorities.

Act 37 also modifies current law's informed consent requirements, as follows:

- Repeals the requirement that the woman be apprised of the availability of fetal ultrasound imaging and auscultation of fetal heart tone services, and repeals the requirement that the written materials that the woman must receive must state that fetal ultrasound imaging and auscultation of fetal heart tone services are obtainable by pregnant women who wish to use them and must describe the services.
- Requires the physician, or other qualified physician, to inform the pregnant woman that she is required to obtain an ultrasound that meets the Act's requirements, if she has not already had an ultrasound that meets those requirements. The physician, or other qualified physician, must provide to the pregnant woman a list of providers that will perform an ultrasound at no cost to the woman.
- Requires that the certification form that she must sign prior to the abortion must include a certification that the required ultrasound has been performed, or that the requirement was waived due to the pregnancy being a result of sexual assault or medical emergency. The certification must indicate who performed the ultrasound and when it was performed, and, if the ultrasound was performed at a facility other than the facility where the physician who is to perform the abortion is located, the woman must provide the certification form to the physician who is to perform or induce the abortion.

PENALTIES

Prior Law

Any person who violates the informed consent for abortion requirements is subject to a forfeiture of not less than \$1,000 nor more than \$10,000. The penalties may not be assessed against a woman upon whom an abortion is performed or attempted to be performed.

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Act 37 retains the penalties described above and applies them to any person who violates the ultrasound requirement.

CIVIL PROCEEDINGS AND DAMAGES

Prior Law

Under prior law, in any court proceeding brought for a violation of the informed consent requirements, the court, upon a party's request or on its own accord, must rule whether the identity of any woman upon whom an abortion was performed or induced, or attempted to be performed or induced, must be kept confidential, unless the woman waives confidentiality. If the court determines that the woman's identity should be kept confidential, the court must issue orders, direct the sealing of the record, and exclude individuals from the hearing rooms or courtrooms to safeguard the woman's identity. Any person, except a public official, who brings an action regarding a violation of the informed consent requirements must do so under a pseudonym, unless the person obtains the woman's written consent. The confidentiality requirements, however, may not allow the identity of the plaintiff or witness to be concealed from a defendant.

The law specifies that a person who violates certain voluntary and informed consent requirements is liable for damages to the woman on or for whom an abortion is performed or induced. Someone who has been awarded damages for that violation is also entitled to additional punitive damages of not less than \$1,000 nor more than \$10,000 if the violation satisfies the standard to obtain punitive damages. A person who recovers damages may also recover reasonable attorney fees.

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The Act retains the same confidentiality procedures and provisions described above, and applies them to court proceedings brought for violations of the ultrasound requirements.

In addition, the Act specifies that, in addition to the woman on whom an abortion is performed or attempted, the father and any grandparent of the aborted unborn child, or the unborn child that is attempted to be aborted, may bring a claim for damages against a person who violates the ultrasound requirements. The Act allows a person who recovers damages for a violation of the ultrasound requirements to recover the same additional amounts of punitive damages as another violation of informed consent requirements if the standard for obtaining punitive damages is satisfied. However, the Act does not allow a person who recovers damages for a violation of the ultrasound requirements to recover reasonable attorney fees. Additionally, a district attorney or the attorney general may bring an action for an injunction against any person who performs, or attempts to perform, an abortion in violation of the ultrasound requirements.

ADMITTING PRIVILEGES

Prior Law

Under current s. Med 11.04 (1) (g), Wis. Adm. Code, a physician who is to perform an abortion must have arrangements with a hospital approved under subch. II of ch. 50, Stats., for admission of patients needing hospital care. The hospital must be located sufficiently near the facility used so that the patient could be transferred to and arrive at the hospital within 30 minutes of the time when hospitalization appears necessary. The Act does not change this requirement.

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The Act prohibits a physician from performing an abortion unless he or she has admitting privileges in a hospital within 30 miles of the location where the abortion is to be performed. Under the Act, a person who violates the admitting privilege requirement is required to forfeit not less than \$1,000 nor more than \$10,000 and may have a claim for damages brought against him or her by the woman on whom an abortion is performed or attempted, or the father or any grandparent of the aborted unborn child, or the unborn child that is attempted to be aborted. A person who is awarded damages for a violation of the admitting privilege requirement may recover additional punitive damages in the same amounts as a violation of the voluntary and informed consent requirements and may also recover reasonable attorney fees. Under the Act, the same confidentiality procedures and provisions apply to a proceeding brought for a violation of the admitting privilege requirement as apply to a proceeding brought for a violation of the voluntary and informed consent requirements.

Effective date: Act 37 takes effect on July 7, 2013.*

Prepared by: Laura Rose, Deputy Director

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LR:jb;ksm

*On July 8, 2013, the United States District Court for the Western District of Wisconsin issued a temporary restraining order enjoining the enforcement of Act 37's admitting privileges requirement, described above (Case No. 13-cv-465-wmc).